



February 14, 2017

BY E-MAIL

Re: Case No. 17-1-0115-1

Dear *****:

On January 18, 2017, the Customer Service Bureau forwarded us your complaint regarding a poster titled “Resist Trump: Mobilize for Mass Protests Jan 20 & 21.” The poster advertised a Town Hall Action Meeting at City Hall on January 14. The bottom of the poster included contact information for Councilmember Kshama Sawant. I am dismissing your complaint for the reasons discussed below.

LAW AND PRIOR DECISIONS

I analyze your complaint under the Ethics Code and not the Elections Code, which at SMC 2.04.300 provides that “[n]o elected official nor any employee of his or her office...may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office....”

I concur with the Federal Office of Special Counsel that “[b]ecause the 2020 election is still more than three years away, at this time not all expressions of support or opposition to President Trump constitute political activity... For example, the [federal law barring federal employees from engaging in political activity] does not prohibit federal employees, either on duty or off duty, from...expressing their approval or disapproval of President Trump or his Administration, policies, or actions.” (Full text of February 7, 2017 letter available at <http://www.cnn.com/2017/02/09/politics/federal-employees-trump-hatch-act/>.) Absent a clear nexus between an action taken at City expense and the President’s reelection effort, I do not find this poster to violate the bar on the use of public resources to assist a campaign for election.

Under SMC 4.16.070.B.2 of the Ethics Code, Councilmember Sawant may not “[u]se or attempt to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose.”

Here is how Councilmember Sawant’s staff articulated the City purpose served by the expenditure of City resources on the production of the poster and the use of City Hall for the organizing effort (the email is reproduced verbatim):

The City purpose for the poster and coalition to resist Trump is rooted in the widespread fear among huge numbers of our constituent that president elect Donald Trump will follow through on his threats to deport immigrants en mass, register all Muslims, roll back recent gains on LGBTQ rights basic rights for women, attack unions, and ignore the threat of climate change. His threats to withhold funding for sanctuary cities and recent cabinet choices have added greatly to this fear.

Trumps proposed policies, while made on a national scale, will have undeniable local consequences for our constituents. Recognizing this fact, the City Council recently adopted the following: "A RESOLUTION reaffirming Seattle's values of inclusion, respect, and justice, and the City's commitment toward actions to reinforce these values; and calling on President-elect Donald Trump to condemn recent attacks and hate speech that perpetuate religious persecution, racism, sexism, homophobia, transphobia, and xenophobia."

In addition to making this public statement, many of our constituents have called on us to help them organize and protest Trump's policies. The poster and the coalition to resist Trump is a direct response to that request, and a critical component of defending ourselves from the concrete threat that he poses to the communities in our district and Seattle as a whole.

The Councilmember's articulated City purpose is sufficient to pass muster under the deferential standard of review articulated a decade ago in a matter involving Councilmember Peter Steinbrueck, an architect who had used City funds to pay for his attendance at an American Institute of Architects (AIA) conference. In that case, I wrote:

Councilmember Steinbrueck was acting within the scope of his authority when he determined that his AIA-related expenses served a City purpose, and could be charged to the City. Elected officials have no supervisor beyond, of course, the citizens of Seattle. Unlike a department employee, there is no process for a Councilmember to submit a planned expense to a supervisor for review and approval. *The scope of a Councilmember's authority is broad*, limited only by the City Charter and City, State and Federal law, and there is no evidence that Councilmember Steinbrueck exceeded that authority. (Emphasis added.)

I also note that other elected officials have used public resources to oppose the new President's policies on the Dakota Access Pipeline, his executive orders, and his threat to take federal funding away from sanctuary cities. While other elected officials have taken more orthodox approaches to opposing the President – holding press conferences, issuing statements, crafting resolutions for adoption by the City Council – the fact that Councilmember Sawant's methods may strike some as unconventional does not mean they are illegal.

CONCLUSION

I am dismissing your complaint. If you would like to appeal this dismissal, you may do so under the Ethics and Elections Commission's Administrative Rule 4.¹

Very truly yours,



Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission

¹ Rule 4 APPEALS

- A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.
- B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.
- C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.
- D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.
- E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.
- F. The Commission shall act on the request at the next meeting at which it may be practicable by:
1. deciding whether to review the Executive Director's decision; and
 2. if it decides to do so, either affirming, reversing, or amending the decision.
- G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.